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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/319,724	09/08/1999	GERLINDE LENZEN	045636-5025	3497

9629 7590 09/02/2004

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WASHINGTON, DC 20004

EXAMINER

BRANNOCK, MICHAEL T

ART UNIT	PAPER NUMBER
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1646

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/319,724	<b>Applicant(s)</b> LENZEN ET AL.	
	<b>Examiner</b> Michael Brannock	<b>Art Unit</b> 1646	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 23 and 26.

Claim(s) rejected: 22, 25, 28, 29, 33-37, 39, 47 and 48.

Claim(s) withdrawn from consideration: 30-32, 38, 46.

8. ☒ The drawing correction filed on 25 June 2004 is a) ☐ approved or b) ☒ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_.

**Attachment to Advisory Action**

The proposed amendment will not be entered because it raises new issues under 35 USC 112, second paragraph, and possible under the first paragraph as well. Specifically, it is unclear what limitations the proposed phrase “and wherein a role of said polypeptide involves inhibition of eosinophil chemotaxis” would place on claim 22. The introduction of the phrase “a role of said polypeptide involves” confuses the nexus between the polypeptide and the act of inhibition of eosinophil chemotaxis, i.e. what type of part does the polypeptide play in the inhibition of eosinophil chemotaxis? As the claim reads, the polypeptide could have an antagonistic or agonistic role in the inhibition of eosinophil chemotaxis. Furthermore the claim requires that the “substantially pure” polypeptide have a role in eosinophil chemotaxis; thus it is unclear if Applicant intends this to be literally true, i.e. one would not expect a substantially pure protein that endogenously functions as an integral membrane protein would function in a substantially pure form.

The proposed amendment would overcome all previous grounds of rejection.

***Drawings***

The Drawings provided 6/25/04 were not a complete set. There is no complete set of Drawings in the file. Appropriate action is required.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brannock, Ph.D., whose telephone number is (571) 272-0869. The examiner can normally be reached on Mondays through Fridays from 10:00 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, Ph.D., can be reached at (571) 272-0961.

Official papers filed by fax should be directed to (703) 872-9306. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

MB



August 27, 2004



ELIZABETH KEMMERER  
PRIMARY EXAMINER